

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOANN DARLING,

Defendant and Appellant.

B213933

(Los Angeles County
Super. Ct. No. KA083789)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Steven D. Blades, Judge. Affirmed.

Karyn H. Bucur, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Victoria B. Wilson and Yun K. Lee, Deputy Attorneys General, for Plaintiff and Respondent.

JoAnn Darling appeals from the judgment entered after a jury convicted her of misdemeanor petty theft. We reject her contention that the trial court did not understand it had discretion to impose a victim restitution fine below the \$400 limit on petty theft, and affirm the judgment.

FACTS AND PROCEDURAL HISTORY

JoAnn Darling was charged with grand theft, but convicted of petty theft, for her part as the intermediary in an internet check-cashing scheme that tricked Caroline Pangilinan into cashing a bad check for \$2,500 from Sean Blancard.¹ Pangilinan listed furniture for sale on an internet site and Blancard agreed to buy it for \$120. He later told Pangilinan that his bank sent her a \$2,500 check by mistake, asked her to cash it at her bank, take out \$120 for the furniture and \$100 for her trouble, and wire the rest to Darling by Western Union. Pangilinan did so, and Darling retrieved the money wire funds. When nobody came to pick up the furniture, Pangilinan contacted Blancard, who asked her to cash another check for him. Now suspicious of Blancard, Pangilinan called the police. The \$2,500 check from Blancard was bad. Combined with bank fees and other costs, Pangilinan was out \$2,905.01.

The police tracked down Darling, who told them she knew what she was doing would get her in trouble. She fully cooperated with the police and helped them try, unsuccessfully, to find Blancard. According to Pangilinan, she was a down-on-her-luck widow, with two kids, who posted an internet ad seeking work. Blancard hired her, claiming he was an accountant with clients in Nigeria, and needed her to pick up money wire funds and send them on to him for eventual transmission to his clients. Darling took \$100 as a commission from each such transaction.

Darling was charged with grand theft, but the jury convicted her of misdemeanor petty theft. She was placed on formal probation for three years and ordered to make victim restitution of \$2,150.01. She contends the trial court did not understand it had the

¹ Blancard identified himself to Pangilinan as Robert Adams.

discretion to impose a restitution fine below the \$400 line that separates petty theft from grand theft. Accordingly, she contends the trial court abused its discretion, requiring a remand for resentencing on that issue.

DISCUSSION

With exceptions not applicable here, “in every case in which a [crime] victim has suffered economic loss as a result of the defendant’s conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record.” (Pen. Code, § 1202.4, subd. (f).) Therefore, the trial court has no discretion over the issuance of the award itself, and very little over the amount. (*People v. Brown* (2007) 147 Cal.App.4th 1213, 1225.) The court ordered Darling to pay restitution of \$2,150, even though there was evidence that Pangilinan lost more than \$2,900.

At the sentencing hearing, Darling’s lawyer asked the court to limit the victim restitution award to \$400 because Darling was convicted of petty theft, and received only \$100 of the money Pangilinan lost. When the prosecutor argued against defense counsel’s assertion that the restitution amount was limited to \$400 by the nature of the verdict, the court agreed, saying, “I don’t think that’s correct.” The court then asked the prosecutor whether it was “all or nothing? Is it \$400 or \$2,900, or is there room for a compromise here?” The prosecutor argued that the jury found Darling was a knowing participant in the crime, but reached a compromise verdict based on her circumstances. The prosecutor concluded by saying she was not sure she had answered the court’s question. The court replied that “[t]here may not be an answer.” It then went on to impose the restitution fine of \$2,150.

Darling contends the trial court erred because it erroneously believed it had no discretion to impose restitution at or below \$400. We disagree. Darling cites two cases that stand for nothing more than the proposition that the trial court has discretion to order restitution in an amount below the actual loss. (*People v. Ortiz* (1997) 53 Cal.App.4th

791, 800; *People v. Rowland* (1997) 51 Cal.App.4th 1745, 1751.) She cites no authority for the proposition that the trial court has discretion to order restitution well below the victim's actual loss simply because the jury chose to convict the defendant of petty theft instead of grand theft.

The absence of such authority is explained by the fact that it would be directly contrary to the statute, which commands the trial court *in every case* to award restitution in the full amount unless there are compelling and extraordinary reasons to award a lesser amount. The trial court's discussion with the prosecutor concerned whether the court was obligated to keep the award at or below \$400 simply because the jury convicted Darling of petty theft. In other words, the court was asking whether it lacked discretion in the matter and had to limit the restitution amount accordingly. The court properly rejected that notion, and then exercised its discretion to award less than the full amount of Pangilinan's loss. As a result, we hold that no abuse of discretion occurred.

DISPOSITION

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

LICHTMAN, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.